



आयुक्त का कार्यालय

OFFICE OF THE COMMISSIONER

केंद्रीय वस्तु एवं सेवा कर तथा केंद्रीय उत्पाद शुल्क, अहमदाबाद उत्तर  
CENTRAL GOODS & SERVICES TAX & CENTRAL EXCISE, AHMEDABAD NORTH

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निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./F.No. GST/15-58/OA/2023-24

DIN- 20240364WT000000D699

आदेश की तारीख/Date of Order: - 19.03.2024

जारी करने की तारीख/Date of Issue :- 19.03.2024

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

अपर आयुक्त / Additional Commissioner

**मूल आदेश संख्या / Order-In-Original No. 100/ADC/LD/GST/2023-24**

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।  
This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 90 दिन के अन्दर आयुक्त (अपील), केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केंद्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप GST-APL-01 में दाखिल कर सकता है। इस अपील पर रु. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form GST-APL-01 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within three months from the date of its communication. The appeal should bear a court fee stamp of Rs. 5.00 only.

इस आदेश के विरुद्ध अपील करने के लिए आयुक्त (अपील) के समक्ष नियमानुसार पूर्व जमा के धनराशी का प्रमाण देना आवश्यक है।

An appeal against this order shall lie before the Commissioner (Appeal) on giving proof of payment of pre deposit as per rules.

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या GST-APL-01 में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केंद्रीय जी. एस. टी. नियमावली, 2017 के नियम 108 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

- (1) उक्त अपील की प्रति।
- (2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form GST-APL-01 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 108 of CGST Rules, 2017. It should be accompanied with the following:

- (1) Copy of accompanied Appeal.
- (2) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.5.00.

विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice F. No. GST/15-58/OA/2023-24 dated 10.01.2024 issued to M/s. Vishnu Tobacco Product (GSTIN : 24AAGPG5722P1ZJ), 101, Matrix, Behind Vodafone House, Prahlad Nagar, Ahmedabad, Gujarat - 380015.





## BRIEF FACTS OF THE CASE

M/s Vishnu Tobacco Product, located at 101, Matrix, Behind Vodafone House, Prahlad Nagar, Ahmedabad, Gujarat, 380015 (herein after referred to as the 'Noticee' for the sake of brevity) are engaged in manufacturing and sale of Tobacco Jarda Scented Tobacco falling under Chapter Heading 24039930 and were holding Goods and Service Tax Identification No: 24AAGPG5722P1ZJ for supply of taxable Goods and Services. Wherever, applicable parallel provisions of GGST/IGST Act, 2017 may be referred under this notice.

2. The Noticee vide letter dated 14.05.2019 intimated to discontinue the payment of National Calamity Contingent Duty (hereinafter referred to as the "NCCD" for the sake of brevity) on Jarda Scented Tobacco falling under Chapter Heading 24039930 of the First Schedule of the Central Excise Tariff Act, (now Schedule IV under Notification No. 1/2017 Central Tax (Rate), dated 28-6-2017) with effect from 01.05.2019 by quoting the judgment of the Hon'ble Supreme Court of India in case of M/s. Bajaj Auto Limited v/s Union of India in Civil Appeal No. 3239 of 2019 wherein Supreme Court vide Order dated 27.03.2019 set aside the impugned orders and quashed the Show Cause Notice and holding that the appellant is not liable to pay NCCD, Education Cess and Secondary & Higher Education Cess. The relevant portion of the order is as under:-

".....

*2. The appeal raises the legal question of the liability towards NCCD, Education Cess and Secondary & Higher Education Cess of a manufacturing establishment, which is exempted from payment of Central Excise Duty (for short 'CENVAT') under the Central Excise Act, 1944.*

3 to 14.....

15. A reference was also made to the judgement of the Rajasthan High Court, in *Banswara Syntex Ltd. v. Union of India 2*, where it has been observed as under:

*"15. The very fact that the surcharge is collected as part of levy under three different enactments goes to show that scheme of levy of education cess was by way of collecting special funds for the purpose of Government project towards providing and financing universalized quality of basic education by enhancing the burden of Central excise duty, customs duty, and service tax by way of charging surcharge to be collected for the purpose of the Union. But, it was made clear that in respect of all the three taxes, the surcharge collected along with the tax will bear the same character of respective taxes to which surcharge was appended and was to be governed by the respective enactments 2 2007 SCC OnLine Raj 365:: (2007) 216 ELT 16 under which education cess in the form of surcharge is levied and collected.*

16 to 21.....

22. We may notice that this Court, in *SRD Nutrients Pvt. Ltd.* gave its imprimatur to the view expressed by the Rajasthan High Court in *Banswara Syntex Ltd.* The rationale is that while there may be surcharges under 6 (1990) 4 SCC 256 7 (supra) 8 (supra) 9 (supra) 10 (supra) different financial enactments to provide the Government with revenue for specified purposes, the same have been notified as leviable in the nature of a particular kind of duty. In the case of NCCD, it is in the nature of an excise duty. It has to bear the same character as those respective taxes to which the surcharge is appended. NCCD will not cease to be an excise duty, but is the same as an excise duty, even if it is levied on the product. Thus, when NCCD, at the time of collection, takes the character of a duty on the



product, whatever may be the rationale behind it, it is also subject to the provisions relating to excise duty, applicable to it in the manner of collection as well as the obligation of the taxpayer to discharge the duty. Once the excise duty is exempted, NCCD, levied as an excise duty cannot partake a different character and, thus, would be entitled to the benefit of the exemption notification. The exemption notification also states that the exemption is from the "whole of the duty of excise or additional duty of excise. We may also note that the exemption itself is for a period of ten years from the date of commercial production of the unit.

23. We are, thus, of the view that the appellant would not be liable to pay the NCCD.

24 to 25....."

3. Whereas, NCCD was imposed under Section 136 of the Finance Act, 2001. The relevant provision reads as,

"(1) In the case of goods specified in the Seventh Schedule, being goods manufactured or produced, there shall be levied and collected for the purposes of the Union, by surcharge, a duty of excise, to be called the National Calamity Contingent duty (hereinafter referred to as the National Calamity duty), at the rates specified in the said Schedule.

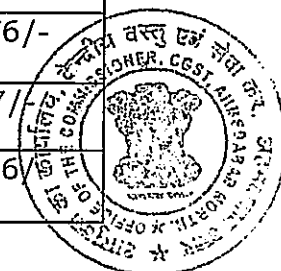
(2) The National Calamity Contingent duty chargeable on the goods specified in the Seventh Schedule shall be in addition to any other duties of excise chargeable on such goods under the Central Excise Act, 1944 (1 of 1944) or any other law for the time being in force.

(3) The provisions of Central Excise Act, 1944 (1 of 1944) and the rules made thereunder, including those relating to refunds and exemptions from duties and imposition of penalty, shall, as far as may be, apply in relation to levy and collection of the National Calamity duty leviable under this section in respect of goods specified in the Seventh Schedule as they apply in relation to levy and collection of the duties of excise on such goods under that Act or those rules, as

4. Subsequently the Noticee vide their letter dated 20.01.2020 & 23.01.2020 agreed that the payment of NCCD for the **intervening period i.e. from 01.05.2019 to 05.07.2019** (during the period which they had not paid the NCCD) needs to be paid. Further, the noticee also mentioned in the letter that they had resumed payment of **NCCD w.e.f. 06.07.2019 due to the budgetary changes and paid Rs. 2,73,13,736/-**, being NCCD due for the period from 01.05.2019 to 05.07.2019 and also submitted the proof of payment vide CIN Number 20200120145603882522, 20200120145313882460, 20200120133043849030 all dated 20.01.2020. The details of Assessable value and NCCD paid thereon are as hereunder.

**Table-I**

Sr. No.	Month	Assessable Value (Rs)	NCCD paid (Rs.)
1	May-2019	13,20,59,925/-	1,32,05,993/-
2	June-2019	11,36,00,763/-	1,13,60,076/-
3	July-2019 (upto 5th)	2,74,76,667/-	27,47,667/-
	Total	27,31,37,357/-	2,73,13,736/-



5. Whereas, it has been noticed that they have discharged the liability towards NCCD from 1<sup>st</sup> May-2019 to 5<sup>th</sup> July-2019 on 20.01.2020. However, the interest on delay payment of NCCD was not paid by them. On being pointed out by the department, the noticee later on paid the interest of amounting Rs.21,71,847/- vide having CIN Number-20230529124332189093 and Rs.1,89,702/- vide CIN 20220426173147347437 both dated 29.05.2023 on delay payment of NCCD and submitted the proof of payment vide their letter dated 30.05.2023.

6. Whereas, on verification of data available with department's system called as AIO (All in One Unit). It is noticed that the noticee has not included the NCCD value in total transaction value/taxable value which is required to be included while arriving at transaction value/taxable value for purpose of payment of GST in terms of Section 15 of CGST Act, 2017 read with corresponding provision of GGST/IGST Act, 2017. For reference Section 15 of CGST Act, 2017 is reproduced below:-

**\* Section 15. Value of Taxable Supply.-**

(1) *The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.*

(2) *The value of supply shall include-*

**(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;**

**(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;**

**(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;**

**(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and**

**(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.**

**Explanation.-For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.**

(3) *The value of the supply shall not include any discount which is given-*

**(a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and**

**(b) after the supply has been effected, if-**

**(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and**



(ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

(4) where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.

Explanation. - For the purposes of this Act,-

(a) persons shall be deemed to be "related persons" if-

(i) such persons are officers or directors of one another's businesses;

(ii) such persons are legally recognised partners in business;

(iii) such persons are employer and employee;

(iv) any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;

(v) one of them directly or indirectly controls the other;

(vi) both of them are directly or indirectly controlled by a third person;

(vii) together they directly or indirectly control a third person; or

(viii) they are members of the same family;

(b) the term "person" also includes legal persons;

(c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

**6.1** From the above, it is cleared that as per valuation rule under Section 15 of the CGST Act, 2017 any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act shall be included in value of supply, if charged separately by the supplier. Therefore, C. Ex duty and NCCD need to be included in the taxable turnover for the purpose of calculation of GST@28% (CGST@ 14% & SGST@14%) & Cess@160% as discussed above. In this connection letter dated 28.04.2023 has been issued to the taxpayer for payment of GST & Cess amounting to Rs. **5,13,49,824/-** on amount of NCCD Duty Rs.2,73,13,736/- paid for the period of 01-05.2019 to 05.07.2019( on assessable value of Rs.27,13,37,357/-). The tax that is required to be paid by the taxpayer is as under:

**Table-II**

Sr.N o	NCCD Paid	Tax Required to be paid			Total
		CGST (@14%)	SGST (@14%)	Cess (@160%)	
1	1,32,05,993 /-	18,48,839/-	18,48,839/-	2,11,29,589/-	24827267
2	1,13,60,076 /-	15,90,411/-	15,90,411/-	1,81,76,122/-	21356943
3	27,47,667/-	3,84,673/-	3,84,673/-	43,96,267/-	5165614
<b>Total</b>					<b>5,13,49,824/-</b>

Therefore, as discussed in the above table the tax amounting to **Rs. 5,13,49,824/-** on non inclusion of NCCD in the payment of GST for the period from 1<sup>st</sup> May, 2019 to 5<sup>th</sup> July, 2019 is required to be recovered from the noticee alongwith applicable interest and penalty in terms of Section 73(1) of the CGST Act, 2017 read with Section 50 & 122(2)(a) of the CGST Act,2017.

**7. Relevant Legal Provisions as per the CGST Acts & Rules 2017**

**Section 50. Interest on delayed payment of tax.**

*(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council:*

*1[Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.]*

*(2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.*

*2[(3) Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding twenty-four per cent. as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed]*

**\*Section 122. Penalty for certain offences.-**

(1) Where a taxable person who-

(i)

.....  
 .....  
 .....

(vi) fails to collect tax in accordance with the provisions of sub-section (1) of section 52, or collects an amount which is less than the amount required to be collected under the said sub-section or where he fails to pay to the Government the amount collected as tax under sub-section (3) of section 52;

.....  
 .....

(xxi)

(2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised,-

(a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher;



(b) for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher.

**\* Section 59. Self-assessment. -**

*"Every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under section 39."*

**\*Section 39. Furnishing of returns.-**

*1[(1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, and within such time, as may be prescribed:.....*

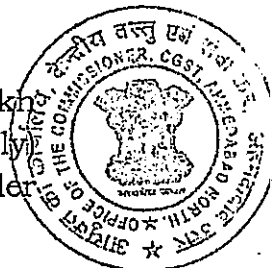
8. In view of the above, intimation of tax ascertained in Form-DRC-01A vide DIN No.20231064WT0000813968 dated 05.10.2023 was issued to the noticee either for the payment of Rs.5,13,49,824/-(CGST@14%, SGST@14% & Cess@160%) on non-inclusive amount of NCCD Rs. 2,73,13,736/- or filing reply against the said liability, if any. In response, the noticee submitted their reply dated 18.10.2023 wherein, they reiterated their earlier reply dated 02.08.2023 submitted in response of Jurisdictional office letter dated 28.04.2023 whereby, they are not agreed with contention of revenue and not paid the amount in question. Further they clarified that NCCD for the period from 01.05.2019 to 05.07.2019, was not charged or collected from the customers in the invoices issued to them nor was separately recovered by any mode.

From the above, it is clear that the noticee fails to collect NCCD duty from the customer for period in question and discontinued the payment of NCCD, Later on paid the amount of NCCD for the said period of discontinuation. Therefore, the noticee render himself liable for penal action under the Section 122(1)(VI) of CGST Act, 2017 and Section 122(2)(a) of CGST Act, 2017 read with corresponding provision of GGST/IGST Act, 2017.

9. Accordingly, a Show Cause Notice No.- GST/15-58/OA/2023-24 dated 10.01.2024 was issued by the Additional Commissioner, Ahmedabad North calling upon M/s Vishnu Tobacco Product., located at 101, Matrix, Behind Vodafone House, Prahlad Nagar, Ahmedabad, Gujarat, 380015 as to why:

(i) NCCD amounting to Rs. 2,73,13,736/- (Two Crore Seventy Three Lakh Thirteen Thousand Seven Hundred and Thirty Six only) as per Table-I hereinabove should not be considered for inclusion in the transaction value while calculating the GST and Cess in terms of Section 15 of the CGST Act, 2017/Gujarat GST Act, 2017.

(ii) GST amount of Rs.5,13,49,824/-(Five Crore Thirteen Lakh Fourty Nine Thousand Eight Hundred and Twenty Four only) should not be demanded and recovered from them under Section 73(1) of the CGST Act, 2017/Gujarat GST Act, 2017.





- (iii) Interest payable in terms of Section 50 of the CGST Act, 2017/Gujarat GST Act, 2017 should not be recovered from them on the demand as discussed in (ii) above;
- (iv) Penalty in terms of Section 122(2)(a) of the CGST Act, 2017/Gujarat GST Act, 2017 should not be imposed upon them on the demand as discussed in (ii) above;

### **DEFENCE REPLY**

**10.** M/s Vishnu Tobacco Product has filed their defence reply vide letter dated 27.02.2024 wherein they submitted that:-

- (i) They were paying NCCD post GST regime on all supplies. However, the Hon'ble Supreme Court in the case of Bajaj Auto India Ltd., Vs. Union of India held that the NCCD was in the nature of a duty of excise and consequently if no excise duty was payable, it would mean that no NCCD was also to be paid. Based on the above judgement of the Hon'ble Supreme Court, which was the law of the land, they decided to discontinue the payment of NCCD with effect from 01.05.2019, for which intimation was given to the department by them. Further, Hon'ble Finance Minister of the Government of India while presenting the budget on 06.07.2019, made a specific reference to the judgement of the Hon'ble Supreme Court and thereafter stated that in order to overcome legal tangle as to levy and collect NCCD, a token amount of 0.5% as Excise duty was being levied. Thus, during the material time the Government had acknowledged the said judgement of the Hon'ble Supreme Court in the case of Bajaj Auto Ltd.
- (ii) They submitted that the judgement of the Hon'ble Supreme Court in the case of Bajaj Auto was nullified by the judgement of the Hon'ble Supreme Court in the case of Unicom Industries.
- (iii) Subsequently, due to imposition of excise duty @ 0.5% on Jarda Scented Tobacco with effect from 06.07.2019 as a result of budgetary changes, they had started paying NCCD on the said goods. Also, they vide letter dated 20.01.2020 & 23.01.2020 addressed to the jurisdictional Assistant/Deputy Commissioner, CGST & Central Excise informed that they had made payment of NCCD of Rs.2,73,13,736/-during the intervening period from 01.05.2019 to 05.07.2019 with interest.
- (iv) They submitted that subject Show Cause Notice has been issued demanding GST & Cess on the amount of NCCD of Rs.2,73,13,736/- on the ground that same required to be added in terms of Section 15 of the CGST Act, 2017. Further, they submitted that prior to discontinuation of payment of NCCD and after 01.05.2019 and after budgetary changes w.e.f. 05.07.2019, they would like to demonstrate their invoice system as under;-
- Prior to 01.05.2019 for 40 Bag(Consisting of 12,00,000/- pouches of MRP Rs. 1) as follows-



Basic value for 40 bags	Rs. 2,07,000/-
NCCD	Rs. 54,000/-
Taxable value for GST & Cess	Rs. 2,61,000/-

Copy of invoice No.- U1/00008 dated 01.04.2019 is enclosed.(During the month of April 2019, there was Nil Basic Excise Duty and NCCD was 10%) (Assessable value 45% of MRP)

- After 01.05.2019 for 40 Bag(Consisting of 12,00,000/- pouches of MRP Rs. 1) as follows-

Basic value for 40 bags	Rs. 2,61,000/-
NCCD	0
Taxable value for GST & Cess	Rs. 2,61,000/-

Copy of invoice No.- U1/00552 dated 02.05.2019 is enclosed.(In light of decision of Hon'ble Supreme Court in the case of Bajaj Auto as sated, they stopped charging NCCD w.e.f. 01.05.2019 and rate per bag increased as stated above & the amount recoverable from the customer continued to be the same)

- (v) Further, they stated that amount of NCCD and Central Excise duty applicable w.e.f. 06.07.2019 has been added in the transaction value for the purpose of charging GST & Cess in terms of Section 15 of the CGST Act 2017.
- (vi) It is evident from the above that in above both the situations, the taxable value remained the same i.e. Rs.2,61,000/upon which GST/Cess was paid by them @ 28% and 160% respectively. Therefore, there is/was no loss of Revenue to the Government as far as GST & Cess calculated on the taxable value.
- (vii) As regards, payment of GST on the NCCD part, it is submitted that the said action has been proposed in terms of Section 15 of the CGST Act, 2017. The provisions of said Section 15 (relevant portion) are reproduced herein below for reference.

**Section 15. Value of Taxable Supply.-**

(1) *The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.*

(2) *The value of supply shall include-*

**(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;**

- (viii) On going through the provisions of Section 15(2) of the CGST Act, 2017, it is revealed that the value of supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this act, if charged separately by the



supplier. Thus, the amount of NCCD is required to be included in the value only if it is charged separately by the supplier. In the instant case, they had not charged any NCCD amount separately in the invoices of the relevant period and therefore, the question of including the NCCD amount in the value for arriving at transaction value under Section 15 of the CGST Act, 2017 does not arise.

- (ix) It is also submitted that legislature has in its wisdom provided for inclusion of the taxes only they are charged separately by the supplier. It's a cardinal principle of fiscal interpretation that there is no room for intendment meaning thereby if a word has been used in the statute, due effect to the said words are to be given as also if the words had not been used in the statute, it cannot be plotting for any interpretation. In the present case, "if charged separately by the supplier" has specifically been used under clause (a) of Section 15 (2) of the CGST Act, 2017. Thus, the value of only those taxes and duties which have been charged separately are required to be added to arrive at the transaction value for the purpose of charging and computing GST amount. Based on the above submissions, the NCCD having not been charged separately by them in their invoices for the relevant period, the question of payment of GST on the amount of NCCD does not arise.
- (x) It is to submit that the legislature has in its wisdom provided for inclusion of the taxes only, they are charged separately by the supplier. It is a cardinal principle of fiscal interpretation that there is no room for intendment meaning, thereby if a word has been used in the statue, due effects to the said words are to be given as also if the words had not been used in the statue, it cannot be plotting for any interpretation. In the present case, "if charged separately by the supplier" has specifically being used under clause (a) of sub-section (2) of Section 15 of the CGST Act, 2017. Thus, the value of those taxes and duties which have been charged separately are required to be added to arrive at the transaction value for the purpose of charging and computing GST amount. As stated above, the NCCD having not been charged separately by them in our invoices as mentioned above, the question of payment of GST on the amount of NCCD does not arise.
- (xi) They refer to the provisions of Section 15(1) of the CGST Act, 2017 which provides that the value of supply of goods or services or both shall be the transaction value, which is a price actually paid or payable for the said supply of the goods or services or both, where the supplier and the recipient of the supply are not related and the prices is the sole consideration for supply. In the instant case, it is not the case of the department that the recipient of supply made by them was related to them and therefore it is only the price which is either paid or payable by the recipient would be the transaction value for the purpose of charging GST. They have always discharged the GST payable on the value as shown in the invoices and therefore, no additional amount is required to be paid by them as GST.



- (xii) They further reiterate and clarify that NCCD for the period from 1.5.2019 to 5.7.2019, was neither charged or collected from the customers in the invoices issued to them nor was separately recovered by any mode.
- (xiii) The NCCD amount of Rs.2,73,13,736/paid by them on 20.01.2020 has been shown as expenses in the Balance-Sheet for the financial year 2019-20. The said amount has been borne by them & not recovered from any customers.
- (xiv) In the aforesaid premises, the proposal to charge interest on the NCCD amount of Rs.2,73,13,736522/paid by them voluntarily after the judgement of the Hon'ble Supreme Court in the case of Unicorn Industries, is not tenable.
- (xv) In view of above, no GST amount is required to be paid on the amount of NCCD by them in terms of Section 15 of the CGST Act, 2017. Further, when no amount of GST is required to be paid by them, no penalty and interest is also payable.

### **PERSONAL HEARING**

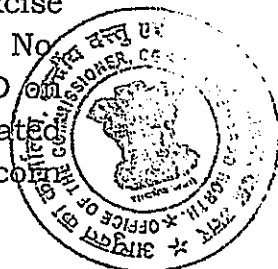
11. Personal hearing in present matter was granted to the said noticee on 01.03.2024. Shri N.K. Tiwari, consultant and authorized person appeared on behalf of the noticees on 04.03.2024 and reiterated their defence reply dated 27.02.2024. He further requested to decide the matter on merits.

### **DISCUSSION AND FINDINGS**

12. I have carefully gone through the case records, contents of show cause notice dated 10.01.2024, defence reply dated 27.02.2024 filed by the said noticee and proceed to decide the case.

13. Briefly stated the fact of the case is that the noticee i.e. M/s Vishnu Tobacco Product having GSTIN 24AAGPG5722P1ZJ were engaged in manufacturing and sale of Tobacco Jarda Scented Tobacco falling under Chapter Heading 24039930. The Noticee vide letter dated 14.05.2019 intimated to discontinue the payment of National Calamity Contingent Duty (NCCD) on Jarda Scented Tobacco falling under Chapter Heading 24039930 of the First Schedule of the Central Excise Tariff Act, (now Schedule IV under Notification No. 1/2017 Central Tax (Rate), dated 28-6-2017) with effect from 01.05.2019 by quoting the judgment of the Hon'ble Supreme Court of India in case of M/s. Bajaj Auto Limited v/s Union of India in Civil Appeal No. 3239 of 2019 wherein Supreme Court vide judgement dated 27.03.2019 held that once the excise duty is exempted, NCCD, levied as an excise duty cannot partake a different character and thus, would be entitled to the benefit of the exemption notification and accordingly the appellant is not liable to pay NCCD.

14. Further, the Finance Minister, Government of India introduced the Finance (No.2) Bill, 2019 in Lok Sabha on 5th July, 2019 wherein excise duty of 0.5% was imposed on tobacco product vide Notification No. 03/2019- Central Excise dated 06.07.2019 to sustain the levy of NCCD on tobacco product. Further, Hon'ble Supreme Court vide Judgement dated 06.12.2019 in Civil Appeal No. 9237/2019 in the case of M/s Unicorn



Industries v. Union of India held that National Calamity Contingent Duty (NCCD) would be leviable even if the Central Excise duty or Customs duty was exempted. Thus, the Hon'ble Supreme Court has declared the judgment in the case of Bajaj Auto Limited v. Union of India, in Civil Appeal No. 3239/2019, as *per incuriam*. In view of said development, the Noticee vide their letter dated 20.01.2020 & 23.01.2020 agreed to pay NCCD for the intervening period i.e. from 01.05.2019 to 05.07.2019 (during the period which they had not paid the NCCD). Further, the noticee also mentioned in the letter that they had resumed payment of NCCD w.e.f. 06.07.2019 due to the budgetary changes. Further, they paid Rs. 2,73,13,736/-, being NCCD due for the period from 01.05.2019 to 05.07.2019 and also submitted the proof of payments. The details of assessable value and NCCD paid thereon are as hereunder.

**Table-III**

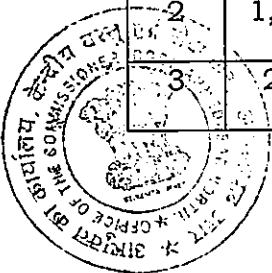
Sr. No.	Month	Assessable Value (Rs)	NCCD paid (Rs.)
1	May-2019	13,20,59,925/-	1,32,05,993/-
2	June-2019	11,36,00,763/-	1,13,60,076/-
3	July-2019 (upto 5th)	2,74,76,667/-	27,47,667/-
	Total	27,31,37,357/-	2,73,13,736/-

15. Further, the noticee also paid the interest of amounting Rs.21,71,847/- vide having CIN Number-20230529124332189093 and Rs.1,89,702/- vide CIN 20220426173147347437 both dated 29.05.2023 on delay payment of NCCD and submitted the proof of payment to the department. Further, on verification of data available with department, it was noticed that noticee has not included the NCCD value in total transaction value/taxable value which is required to be included while arriving at transaction value/taxable value for purpose of payment of GST in terms of Section 15 of CGST Act, 2017 read with corresponding provision of GGST/IGST Act, 2017.

16. In view of Section 15 of CGST Act, 2017, NCCD need to be included in the taxable turnover for the purpose of calculation of GST@28% (CGST@14% & SGST@14%) & Cess@160%. Accordingly, a Show Cause Notice No.- GST/15-58/OA/2023-24 dated 10.01.2024 was issued for tax/GST amounting to Rs. 5,13,49,824/- on non inclusion of NCCD in the payment of GST for the period from 1<sup>st</sup> May, 2019 to 5<sup>th</sup> July, 2019 alongwith applicable interest and penalty in terms of Section 73(1) of the CGST Act, 2017 read with Section 50 & 122(2)(a) of the CGST Act,2017. Details of which are as under:

**Table-IV**

Sr.N	NCCD Paid	Tax Required to be paid			Total
		CGST (@14%)	SGST (@14%)	Cess (@160%)	
1	1,32,05,993/-	18,48,839/-	18,48,839/-	2,11,29,589/-	24827267/-
2	1,13,60,076/-	15,90,411/-	15,90,411/-	1,81,76,122/-	21356943/-
3	27,47,667/-	3,84,673/-	3,84,673/-	43,96,267/-	5165614/-



<b>Total</b>	<b>5,13,49,824/-</b>
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17. Firstly, I take up the defense reply made by the noticee that that as per Section 15(2) of the CGST Act, 2017, the value of supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this act, **if charged separately by the supplier**. However in the instant case, they had not charged any National Calamity Contingent Duty (NCCD) amount separately in their invoices of the relevant period and therefore, the question of including the NCCD amount in the value for arriving at transaction value under Section 15 of the CGST Act, 2017 does not arise. For sake of brevity, I reproduced below Section 15 of the CGST Act, 2017:-

**\* Section 15. Value of Taxable Supply.-**

(1) *The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.*

(2) *The value of supply shall include-*

**(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;**

*(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;*

*(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;*

*(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and*

*(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.*

*Explanation.-For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.*

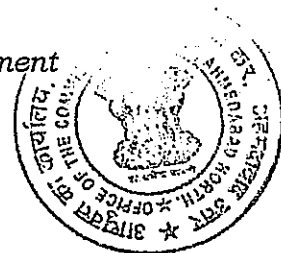
(3) *The value of the supply shall not include any discount which is given-*

*(a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and*

*(b) after the supply has been effected, if-*

*(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and*

*(ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.*



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(4) where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.

*Explanation.* - For the purposes of this Act,-

(a) persons shall be deemed to be "related persons" if-

(i) such persons are officers or directors of one another's businesses;

(ii) such persons are legally recognised partners in business;

(iii) such persons are employer and employee;

(iv) any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;

(v) one of them directly or indirectly controls the other;

(vi) both of them are directly or indirectly controlled by a third person;

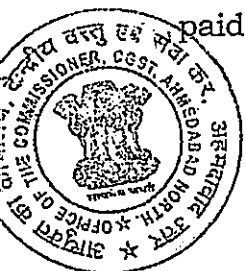
(vii) together they directly or indirectly control a third person; or

(viii) they are members of the same family;

(b) the term "person" also includes legal persons;

(c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

18. From plain reading of Section 15(2)(a) of the CGST Act, 2017, it can be observed that value of supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than GST ACT if same will be charged separately by the supplier. In simple words, the value of only those taxes and duties (other than GST) which have been charged separately by supplier are required to be added to arrive at the taxable value for the purpose of charging GST amount. In the present case, said noticee were engaged in manufacturing and sale of Tobacco Jarda Scented Tobacco falling under Chapter Heading 24039930 on which National Calamity Contingent Duty (NCCD) as a duty of excise is leviable under Section 136 of the Finance Act, 2001. Further, as per definition of Section 15(2)(a) of the CGST Act, 2017, NCCD shall be included in value of supply, **If charged separately by the supplier.** In this regard, I have gone through copy of Invoice No. U1/00417 dated 01.05.2019, U101079 dated 22.06.2019, U1/01157 dated 01.07.2019, U1/01249 dated 05.07.2019 and U1/00552 dated 09.05.2019 issued by the said noticee to M/s Rajshri Trading Co. and find that **NO** NCCD amount was charged separately by the supplier i.e. M/s Vishnu Tobacco Product to the recipient i.e. M/s Rajshri Trading Co. in said invoices of the disputed period i.e. 01.05.2019 to 05.07.2019. Further, I have gone through copy of Balance Sheet for F.Y. 2019-20 of said noticee and find that NCCD amount of Rs. 2,73,13,736/- paid by them has been shown as expenses in the Balance Sheet. Thus, it



can be observed that said amount of Rs. 2,73,13,736/- is borne by M/s Vishnu Tobacco Product not collected from their recipient/customers.

19. In view of above, I find that in Section 15(2)(a) of the CGST Act, 2017 the words "If charged separately by the supplier" is specifically used i.e. the value of those taxes and duties (Other than GST) which have been charged separately by supplier is required to be added to arrive taxable value of calculating GST. However, in present case the NCCD amount was not separately charged by M/s Vishnu Tobacco Product and same has been shown as expenses in Balance Sheet of said noticee. Therefore, NCCD amount of Rs. 2,73,13,736/- does not qualify as taxes and duties (Other than GST) under Section 15(2)(a) of the CGST Act, 2017.

20. Secondly, I take up the defence reply made by the said noticee that as per their invoicing system there is/was no loss of revenue prior to discontinuation of payment of NCCD and period during 01.05.2019 to 05.07.2019. In this regard, I have gone through Invoice No. U1/00008 dated 01.04.2019 (invoice prior to discontinuation of payment of NCCD) issued by M/s Vishnu Tobacco Product to M/s Rajshri Trading Co. and Invoice No. U1/00552 dated 09.05.2019 (Invoice during discontinuation of payment of NCCD) issued by M/s Vishnu Tobacco Product to M/s Rajshri Trading Co. Details of which are as under:-

(i) Invoice No.- U1/00008 dated 01.04.2019 (Prior to 01.05.2019 for 40 Bag(Consisting of 12,00,000/- pouches of MRP Rs. 1) as follows-

A	Basic value for 40 bags	Rs. 2,07,000/-
B	NCCD @ 10% (45% of the MRP value)	(12,00,000*45%)*10%= Rs. 54,000/-
<b>C=(A+B)</b>	<b>Taxable value for GST &amp; Cess</b>	<b>Rs. 2,61,000/-</b>
D	<b>GST@ 28%</b>	<b>2,61,000*28%= Rs. 73,080/-</b>
E	<b>CESS @ 160%</b>	<b>2,61,000*160%= Rs. 4,17,600/-</b>

(ii) Invoice No.- U1/00552 dated 09.05.2019 (After 01.05.2.019 for 40 Bag(Consisting of 12,00,000/- pouches of MRP Rs. 1) as follows-

A	Basic value for 40 bags	Rs. 2,61,000/-
B	NCCD -Not charged (In light of decision of Hon'ble Supreme Court in the case of Bajaj Auto)	0
<b>C=(A+B)</b>	<b>Taxable value for GST &amp; Cess</b>	<b>Rs. 2,61,000/-</b>
D	<b>GST@ 28%</b>	<b>2,61,000*28%= Rs. 73,080/-</b>
E	<b>CESS @ 160%</b>	<b>2,61,000*160%= Rs. 4,17,600/-</b>

From both tables, it can be observed that prior to 01.05.2019, GST and CESS for 40 Bag(Consisting of 12,00,000/- pouches of MRP Rs. 1) was Rs. 73,080/- and Rs. 4,17,600/- respectively. Further, it is observed that during the period from 01.05.2019 to 05.07.2019, GST and CESS for 40 Bag(Consisting of 12,00,000/- pouches of MRP Rs. 1) was also Rs.





73,080/- and Rs. 4,17,600/- respectively. Only rate per bag was increased by the said noticee. I find that the taxable value for computation of GST and CESS in both cases remained the same i.e. Rs. 2,61,000/- on which GST @28% and CESS @ 160% was paid by the said noticee. Further, it is worth to mention that if said noticee continue to pay NCCD @ 10% after 01.05.2019 then taxable value, GST and CESS for 40 Bag(Consisting of 12,00,000/- pouches of MRP Rs. 1) would remain the same. Hence, I agree with submission of said noticee that there is no loss of GST/CESS in present case.

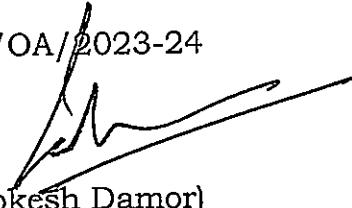
21. In view of the above discussion and findings, I find that Show Cause Notice issued for demand of GST of Rs. 5,13,49,824/- under Section 73(1) of the CGST Act 2017 is not sustainable. As the demand itself is not sustainable, the question of charging interest under Section 50 of CGST Act 2017 and imposing penalty under the provisions of Section 122(2)(a) of CGST Act 2017 does not arise.

22. Accordingly, I pass the following order:

**ORDER**

I. I hereby order to drop proceedings initiated against M/s Vishnu Tobacco Product (GST No: 24AAGPG5722P1ZJ), located at 101, Matrix, Behind Vodafone House, Prahlad Nagar, Ahmedabad, Gujarat, 380015 vide Show Cause Notice No.- GST/15-58/OA/2023-24 dated 10.01.2024.

23. Accordingly the Show Cause Notice No. GST/15-58/OA/2023-24 dated 10.01.2024 is disposed off.

  
(Lokesh Damor)  
Additional Commissioner,  
Central GST & CE,  
Ahmedabad North

F.NO. GST/15-58/OA/2023-24

Dated 19.03.2024

By RPAD/EMAIL

To,  
M/s Vishnu Tobacco Product  
**GSTIN : 24AAGPG5722P1ZJ**  
101, Matrix, Behind Vodafone House,  
Prahlad Nagar, Ahmedabad, Gujarat, 380015.

Copy to:

1. The Commissioner, Central GST & Central Excise, Ahmedabad North.
2. The DC/AC, Central GST & Central Excise, Div- IV Ahmedabad North.
3. The Superintendent, Range-III, Division-IV, Central GST & Central Excise, Ahmedabad North.



- ✓ 4. The Supdt.(System), CGST & C.E. Ahmedabad North for uploading the order on website.
5. Guard File.

